



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 11, 2005

Mr. James M. Frazier, III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2005-01297

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218715.

The Texas Department of Criminal Justice (the "department") received a request for a copy of "the entire case paperwork, and any other documents pertaining to [two specified disciplinary reports]," as well as a copy of the Clements Unit's disciplinary procedure information. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117 and 552.134 of the Government Code. As you have not submitted information pertaining to the disciplinary procedures of Clements Unit for our review, we assume the department has released this information to the requestor. If not, the department must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the department did not fully comply with the requirements of section 552.301 of the Government Code in seeking this open records decision. Specifically, the department failed to seek a ruling from this office and state its claimed exceptions to disclosure within ten business days of receiving this written request. *See* Gov't Code § 552.301(a), (b). The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State*

*Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption, the department must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Since the applicability of sections 552.101, 552.117 and 552.134 can provide compelling reasons to withhold information from disclosure, we will address your arguments.

Section 552.134 of the Government Code relates to inmates of the department and provides, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). The legislature explicitly made section 552.134 subject to section 552.029 of the Government Code. Section 552.029 provides that, notwithstanding section 552.134, eight specified categories of “information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]” These eight categories of information include “basic information regarding . . . an alleged crime involving the inmate.” Gov't Code § 552.029.

On review, we agree that the submitted records constitute information about an inmate for the purposes of section 552.134. However, the records contain information that concerns alleged crimes involving inmates. Thus, the department must release basic information concerning the crimes. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. The department must withhold the remaining submitted information pursuant to section 552.134.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

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<sup>1</sup>Because we reach this conclusion under section 552.134, we need not address your remaining arguments against disclosure.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Marc A. Barenblat  
Assistant Attorney General  
Open Records Division

MAB/sdk

Ref: ID# 218715

Enc. Submitted documents

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(w/o enclosures)